TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~424.~~ 197

ISAAC UNDERHILL, PLAINTIFF IN ERROR,

vs.

JOHN M. HERNDON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED JANUARY 11, 1869.

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INDEX.

	Original.	Print.
Declaration	2	1
Rule to plead and plea	5	2
Jury impanneled, verdict, and motion for new trial	6	3
Bill of exceptions, to wit:		
Patent to Hord	8	4
Patent to Hord	10	5
Deed from Hord to Herndon	12	5
Defendant's proofs, to wit:		
Deed from sheriff to L. M. Peck	20	8
Deed from Peck and wife to Bourland	24	10
Deed from Bourland to Underhill	29	12
Tax receipts	34	13
Judgment	41	16
Appeal bond	42	16
Clerk's certificate	45	17
Writ of error	46	17
Citation	48	18

1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-room in the city of Chicago, in the district aforesaid, before the Hon. Thomas Drummond, district judge of said district, and, in the absence pro tempore of the Hon. David Davis, one of the justices of the Supreme Court of the United States, sole judge of said circuit court, on Friday, the third day of July, in the adjourned May term of said court, in the year of our Lord one thousand eight hundred and sixty-eight, and of our independence the ninety-second year.

WILLIAM H. BRADLEY, *Clerk.*

JOHN M. HERNDON
vs.
ISAAC UNDERHILL.

NORTHERN DISTRICT OF ILLINOIS, *set:*

Be it remembered that on the sixth day of July, in the year of our Lord one thousand eight hundred and sixty-seven, came John M. Herndon, plaintiff, by Messrs. Wead and Jack, his attorneys, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, his declaration in ejectment against Isaac Underhill, defendant, with a notice, affi-
2 davit, and bond for costs thereto attached which said declaration, notice, affidavit, and bond are in the words and figures following, to wit:

Declaration.

United States circuit court.—July term, A. D. 1867.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

John M. Herndon, who is a citizen of the State of Virginia, by Wead & Jack, his attorneys, complains of Isaac Underhill, who is a citizen of the State of Illinois, in a plea of trespass and ejectment.

For that, whereas heretofore, to wit, on the first day of May, in the year eighteen hundred and sixty-seven (A. D. 1867), at and within the county of Iroquois, and State of Illinois, the said plaintiff was possessed of his own demesne in fee simple of a certain tract or parcel of land with the appurtenances, situate in the county of Iroquois, in the said northern district & State of Illinois, and described as follows, to wit: The southwest quarter of the northeast quarter, and the south half of the northwest quarter of section number twenty-six (26), in township number twenty-seven (27) north, of range number thirteen (13) west, in the county and State aforesaid, which said premises exceed in
3 value the sum of five hundred dollars, and which the said plaintiff claims in fee simple; and the said plaintiff being so possessed thereof, the said defendant afterward, to wit, on the same day and year last aforesaid, entered the said premises and ejected the said plaintiff therefrom, and from the time last aforesaid has unlawfully withheld and does now unlawfully withhold from the said plaintiff the possession thereof, to the damage of the said plaintiff of the sum of five hundred dollars; and therefore he brings suit, etc.

By WEAD & JACK,
Attorney for Plaintiff.

To Isaac Underhill, the above-named defendant:

You are hereby notified that the declaration, with a copy of which you are now herewith served, and to which this notice is attached, will be filed in the circuit court of the United States, for the northern district of Illinois, on the fifth day of the July term thereof, A. D. 1867; and that upon filing the same, a rule will be entered requiring you to appear and plead to the said declaration within twenty days after the entry of said rule; and that if you neglect so to appear and plead, a judgment by default will be entered against you, and the plaintiff will recover possession of the premises specified in said declaration.

4 Dated this twenty-eighth day of June, A. D. 1867.

WEAD & JACK,
Attorney for Plaintiff.

Served copy of within on Isaac Underhill, June 28, 1867.

H. M. WEAD.

STATE OF ILLINOIS, *Peoria County, ss:*

Sworn to & subscribed before me this July 5, 1867.

[NOTARIAL SEAL.] WM. JACK, *N. P.*

UNITED STATES OF AMERICA, *Northern District of Illinois:*

United States circuit court.—July term, A. D. 1867.

JOHN M. HERNDON
vs.
ISAAC UNDERHILL. } In ejectment.

I enter myself security for costs in this cause, & promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court; and in default of payment by plaintiff of any costs ordered or adjudged to be paid by him, I agree that execution may issue against my property for any costs taxed against him.

Peoria, July 5, 1867.

H. M. WEAD.

(Endorsed:) Filed July 6, 1867.

WM. H. BRADLEY, *Clk.*

On the same day, to wit, the 6th day of July, in the July term,

5 A. D. 1867, of the said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

Rule to plead.

JOHN M. HERNDON
vs.
ISAAC UNDERHILL. } Ejectment.

Now comes the plaintiff, by Wead and Jack, his attorneys, who file his declaration in ejectment against the defendant, together with a notice thereto attached, and also an affidavit of due service of a true copy of said declaration and notice upon the defendant, and on motion of the plaintiff's attorneys, it is ordered by the court that said cause be docketed, and the defendant ruled to plead within twenty days, or that his default be entered.

On this day, to wit, the 13th day of July, A. D., 1867, came said defendant, by his attorney, and filed in said clerk's office his plea in said entitled cause; which said plea is in the words and figures following, to wit:

Plea.

United States circuit court, nor. dist. Ill.

6 JOHN M. HERNDON } *vs.* ISAAC UNDERHILL. }

The said defendant comes & defends the force & injury, when, &c., and says that he is not guilty of unlawfully withholding the possession of said premises as is in said declaration alleged; & of this he puts himself upon the country, &c.

GEO. F. HARDING,
Att'y for Def't.

(Endorsed:) Filed July 13, 1867.

WM. H. BRADLEY, *Clk.*

On this day, to wit, the 30th day of May, in the adjourned May term, A. D. 1868, of said court, in the record of the proceedings thereof in said entitled cause is the following entry to wit:

Jury empan'd.—Verdict & mo. for new trial.

JOHN M. HERNDON } *vs.* ISAAC UNDERHILL. } Ejectment.

Now come the parties, by their attorneys, and upon issue joined thereupon come a jury of good and lawful men, to wit: John Hoffman, G. H. Fitch, James M. Pratt, Richard Cody, Joshua Thomas, Thomas McKee,
A. Beebe, James Mason, William Lunn, Clement Pierce, William
7 Wilcox, and S. H. Gilbert, who were all duly elected, tried, and sworn well and truly to try said issue; and after hearing the evidence and receiving the instructions of the court, the jury returned into court the following verdict, to wit:

We, the jury, find the defendant guilty of unlawfully withholding from the possession of the plaintiff the real estate and premises described in the plaintiff's declaration as follows: A certain tract or parcel of land with the appurtenances, situate in the county of Iroquois, in the said northern district and State of Illinois, and described as follows, to-wit: The southwest quarter of the northeast quarter, and the south half of the northwest quarter of section number twenty-six (26), in township number twenty-seven (27) north, of range number thirteen (13) west, in the county and State aforesaid. We also find the estate established in the plaintiff on the trial to be an estate in fee simple, and assess his damages to the sum of one cent.

And thereupon the defendant, by his attorney, moves the court for a new trial herein.

8 *Bill of exceptions.*

On the hearing of said cause the following exceptions were taken and were allowed by the court, and are in the words and figures following, to wit:

United States circuit court, northern district of Illinois.—May term, A. D. 1868.

JOHN M. HERNDON
vs.
ISAAC UNDERHILL.

Be it remembered that upon the trial of the above-entitled case at the above-entitled term in said court, the plaintiff offered in evidence the following instruments in writing, viz:

First. Two patents from the United States government to Robert Hord, dated November 1st, 1839; which said patents are in the words and figures following, to wit:

Patent to Hord.

Certificate No. 6,614.

The United States of America to all to whom these presents shall come, greeting:

Whereas Robert Hord, of Caroline County, Virginia, has deposited in the General Land Office of the United States a certificate of the register of the land office at Danville, whereby it appears that full payment has been made by the said Robert Hord, according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the public lands," for the west half of section twenty-six, in township twenty-seven north, of range thirteen west, in the district of lands subject to sale at Danville, Illinois, containing three hundred and twenty acres, according to the official plat of the survey of the said lands returned to the General Land Office by the surveyor general, which said tract has been purchased by the said Robert Hord: Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Robert Hord and to his heirs the said tract above described, to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereto belonging, unto the said Robert Hord and to his heirs and assigns forever.

In testimony whereof, I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed. Given under my hand at the city of Washington, the first day of November, in the year of our Lord one thousand eight hundred and thirty nine, and of the independence of the United States the sixty-fourth.

MARTIN VAN BUREN.

[UNITED STATES GENERAL LAND OFFICE SEAL.]

By the President:

By M. VAN BUREN, JR., *Sec'y.*

H. M. GARLAND,
Recorder of the General Land Office.

Recorded vol. 13, page 498.

Patent to Hord.

Certificate No. 6,621.

The United States of America to all to whom these presents shall come, greeting:

Whereas Robert Hord, of Caroline County, Virginia, has deposited in the General Land Office of the United States a certificate of the register of the land office at Danville, whereby it appears that full payment has been made by the said Robert Hord, according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the public lands," for the west half of the northeast quarter of section twenty-six, in township twenty-seven north, of range thirteen west, in the district of lands subject to sale at Danville, Illinois, containing eighty acres, according to the official plat of the survey of the said lands returned to the Gen-
11 eral Land Office by the surveyor general, which said tract has been purchased by the said Robert Hord: Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Robert Hord and to his heirs the said tract above described, to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging unto the said Robert Hord.

In testimony whereof, I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, the first day of November, in the year of our Lord one thousand eight hundred and thirty-nine, and of the independence of the United States the sixty-fourth.

MARTIN VAN BUREN.

[UNITED STATES GENERAL LAND OFFICE SEAL.]

By the President:

By M. VAN BUREN, JR., *Sec'y.*

H. M. GARLAND,
Recorder of the General Land Office.

Recorded vol. 14, page 1.

12 To the reading of the patent for the west half of sec. 26, 27 N., 13 W. in evidence the defendant objected, because of an erasure & interlineation, as he claimed, apparent upon the face of the same, by the erasure of the word "six," and the interlineation of the word "seven" therefor, in the description of the said premises.

But the court overruled the objection of the defendant & admitted said instrument in evidence, & left it to the jury to say whether there was any alteration of said patent; to which ruling of the court the defendant then & there in open court excepted.

Deed from Hord to Herndon.

Second. The plaintiff next offered in evidence a deed from Robert Hord to John M. Herndon, dated Feb. 4, 1842; which said deed is in the words and figures following, to wit:

This indenture, made this fourth day of February, in the year of *our* Lord one thousand eight hundred and forty-two, between Robert Hord, late of the county of Caroline, in the State of Virginia, of the first part, and John M. Herndon, of the town of Fredericksburg, in the State aforesaid, of the second part, witnesseth: That the said Robert Hord, for and in consideration of the sum of two thousand dollars to him in hand paid by the said John M. Herndon at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath
13 granted, bargained, & sold, aliened, enfeoffed, and confirmed, and by these presents doth grant, bargain, & sell, alien, enfeoff, and confirm, unto the said John M. Herndon, his heirs and assigns forever, the following tracts or parcels of land, with all and singular the rights, privileges, immunities, and appurtenances thereto belonging or in any manner appertaining, situate, lying, and being in the county of Iroquois, in the State of Illinois, which were purchased by the said Robert Hord from the United States; that is to say, the west half of section five, in township twenty-four north, of range ten east, and containing three hundred and fifteen acres and $\frac{8}{100}$ of an acre; also the east half of the southeast quarter of section eight, in township twenty-four north, of range ten east, and containing eighty acres; also the east half of the northeast quarter of section eight, in township twenty-four north, of range ten east, and containing eighty acres; also the west half of the northwest quarter of section eight, in township twenty-four north, of range ten east, and containing eighty acres; also the west half of the southwest quarter of section eight, in township twenty-four north, of range ten east, and containing eighty acres; also the southeast
14 quarter of section seven, in township twenty-four north, of range ten east, and containing one hundred and sixty acres; also the north half of the northeast quarter of section eighteen, in township twenty-four north, of range ten east, and containing eighty acres; also the northwest quarter of section twenty-six, in township twenty-seven north, of range thirteen west, and containing one hundred and sixty acres; also the west half of the northeast quarter of section twenty-six, in township twenty-seven north, of range thirteen west, and containing eighty acres; also the north half of the southwest quarter of section twenty-six, in township twenty seven north, of range thirteen west, and containing eighty acres; to have and to hold the said several tracts or parcels of land, with their and every of their appurtenances, unto the said John M. Herndon, his heirs, and assigns forever, to and for his and their only proper use and behoof; and the said Robert Hord, for himself, his heirs, &c., the said several tracts or parcels of land, with their and every of their appurtenances, unto the said John M. Herndon, his heirs, and assigns, against the claims of all persons whomsoever, shall,
15 will, and doth warrant and forever defend by these presents.

In testimony whereof, the said Robert Hord hath hereunto subscribed his name and affixed his seal the day and year in this indenture first written.

ROBERT HORD. [L. S.]

CORPORATION OF FREDERICKBURG, *to wit:*

We, John Hart and Robert Dickey, justices of the peace in the corporation aforesaid, in the State of Virginia, do hereby certify that Robert Hord, a party to a certain deed bearing date on the fourth day of February, 1842, and hereto annexed, personally appeared before us in our corporation aforesaid, and acknowledged the same to be his act and deed, and desired us to certify the said acknowledgment to the clerk of

the court of Iroquois, in the State of Indiana, or register of deeds in said county, or other proper officer whose duty it is to record deeds, in order that the said deed may be recorded.

Given under our hands and seals this 5th day of February, 1842.

JOHN HART, *J. P.* [L. S.]
ROBERT DICKEY. [L. S.]

16 STATE OF VIRGINIA,
Corporation of Fredericksburg, to wit:

I, John James Chew, clerk of the court of hustings of said corporation, do hereby certify that John Hart and Robert Dickey, esquire, whose hands and seals are affixed to the above certificate of acknowledgment, were, at the time of taking the said acknowledgment, and still are, justices of the peace in the said corporation, duly commissioned and sworn, and that full faith and credit are due to all their acts and deeds as such.

In testimony whereof, I have hereunto set my hand and caused the seal of the said court to be hereto affixed this first day of March, in the year of our Lord 1842, and of our independence the sixty-sixth.

[SEAL.] J. J. CHEW, *C. C. H. F.*

STATE OF VIRGINIA,
Corporation of Fredericksburg, to wit:

I, Benjamin Clark, mayor, and ex officio presiding justice in the court of hustings of said corporation, do hereby certify that John James Chew, whose hand and seal of office are affixed to the above certificate, is clerk of the hustings court of said corporation, and that due faith and credit ought to be paid to all his acts and deeds as such.

17 Certified under my hand and seal this 1st day of March, 1842.

BENJ. CLARK, *J. P.* [SEAL.]

STATE OF VIRGINIA,
Corporation of Fredericksburg, to wit:

I, John James Chew, clerk of the court of hustings of said corporation, do hereby certify that Benjamin Clark, esquire, whose hand and seal are affixed to the above certificate, is mayor and ex officio presiding justice in the court of hustings of said corporation.

Certified this 1st day of March, 1842.

J. J. CHEW, *C. C. H. T.*

STATE OF VIRGINIA,
Corporation of Fredericksburg, ss:

I, John James Chew, clerk of the court of hustings of the said corporation, which is a court of record, do certify that the within deed from Robert Hord to John M. Herndon, as the same appears to be acknowledged, is so acknowledged in conformity with the laws of the said State of Virginia prescribing the regulations for the acknowledgment of similar instruments therein.

In witness whereof, I hereto set my hand and affix the seal of my said court this 19th day of October, in the year of our Lord 1866.

[SEAL.] J. J. CHEW, *Clerk.*

18 STATE OF VIRGINIA,
Corporation of Fredericksburg, to wit:

I, John James Chew, clerk of the court of hustings of said corporation, which is a court of record, do hereby certify that the foregoing deed

from Robert Hord to John M. Herndon is executed and acknowledged in conformity with the laws of the State of Virginia.

In testimony whereof, I hereunto set my hand and affix the seal of the said court this 6th day of July, 1867.

[SEAL.] J. J. CHEW, *Clerk.*

19 Filed for record on the first day of September, A. D. 1842, at 8 o'clock a. m.

JOHN HARWOOD, *Recorder.*

Recorded on the first day of September, 1842, in the records of deeds of Iroquois County, Illinois, Book B, pages 97 & 98.

JOHN HARWOOD, *Recorder.*

To the reading of which in evidence the defendant objected, because the same is not properly proved or acknowledged, because there is no proper evidence of the official character of the justices of the peace taking the same, and none that the acknowledgment was in conformity with the laws of the State where the acknowledgment was taken, & because the acknowledgment is not in conformity with the laws of the State of Illinois, & was not in [in] conformity with the laws of Illinois, nor of Virginia, at the time when the acknowledgment purports to have been made; but the court overruled the objections of the defendant, & allowed said deed to be read in evidence; to which ruling of the court the said defendant then & there excepted.

This was the plaintiff's evidence.

20 *Def't's proofs.*

The defendant then offered in evidence the following deeds, viz: A deed from the sheriff of Iroquois County to L. M. Peck, dated July 1st, 1864; which said deed is in the words and figures following, to wit:

Deed from sheriff of Iroquois Co. to L. M. Peck.

Know all men by these presents, that whereas, at the June term, A. D. 1862, of the county court of Iroquois County, Illinois, a judgment was obtained in said court in favor of the State of Illinois against the following-described lots, pieces, or parcels of land for the several sums set opposite said tracts, respectively, to wit:

The east half of southwest qr., sec. 22, town. 27 N., R. 13 west, for $4 58.

The west half of southwest qr., sec. 22, town. 27 N., R. 13 west, for $4 58.

The east half of southeast qr., sec. 22, town. 27 N., R. 13 west, for $4 58.

The west half of southeast qr., sec. 22, town. 27 N., R. 13 west, for $4 58.

The southwest qr. of northeast qr., sec. 26, town. 27 N., R. 13 west, for $6 06.

The south half of northwest qr., sec. 26, town. 27 N., R. 13 west, for $13 97.

Said sums being the whole amount of taxes, interest, and costs assessed upon said lots, pieces, or parcels of land for the year A. D. 1861; and whereas, on the 25th day of June, A. D. 1862, George King, then treasurer and ex officio collector of the county aforesaid, by virtue of a

precept or order issued out of the county court aforesaid, dated the sixteenth day of June, A. D. 1862, and directed to the said George King, treasurer and collector as aforesaid, did expose at public sale at
21 the court-house in the county aforesaid, in [in] conformity with all the requirements of the statutes in such case made and provided, the said lots, tracts, or parcels of land above described for the satisfaction of the judgment so rendered against them as aforesaid; and whereas at the time and place aforesaid, E. H. Collins having offered to pay the aforesaid sums of money, together with the costs of sale, amounting to the sum of forty-one dollars and fifty-nine cents, for the said lots, pieces, or parcels of land hereinbefore described, to wit: For the east half of southwest quarter of section No. 22, in township No. twenty-seven north, of range No. thirteen west, the sum of five dollars and twelve cents; and for the west half of said southwest quarter of said section twenty-two, in the township and range aforesaid, the sum of five dollars and twelve cents; and for the east half of the southeast quarter of said section No. twenty-two, in said township and range, the sum of five dollars and twelve cents; and for the west half of the southwest quarter of said section No. twenty-two, in said township and range, the sum of five dollars and twelve cents; and for the southwest quarter of the northeast quarter of section No. twenty-six, in said township and range, the sum of six dollars and sixty cents; and for the south half of the northwest quarter of said section No. twenty-six, in said town. and range, the
22 sum of fourteen dollars and fifty-one cents, which was the least quantity of said lots, pieces, or parcels of land bid for the said lots, pieces, or parcels of lands, were then and there struck off and sold to the said E. H. Collins for said sums of money.

And whereas the said E. H. Collins has duly assigned his certificates of purchase of the lands above described unto L. M. Peck, and whereas the said L. M. Peck has made and delivered to me his affidavit of having complied with all the requirements of the statute and constitution of the State of Illinois necessary to entitle him to a deed for the premises so sold to the said E. H. Collins as aforesaid:

Now, therefore, I, Harrison O. Henry, sheriff of the county of Iroquois, for and in consideration of the said above-named sum, amounting to forty-one dollars and fifty-nine cents, paid to George King, treasurer and collector as aforesaid, by the said E. H. Collins at the time of said sale, and in the further consideration of the sum of one dollar to me in hand paid by L. M. Peck, the assignee of said E. H. Collins, and by virtue of the statute in such cases made and provided, have granted, bargained, and sold, and by these presents, do grant, bargain, and sell, unto the said L. M. Peck, and to his heirs and assigns forever, the premises so sold as aforesaid, situated and being in Iroquois County, Illinois, to wit:

23 The east half of the southwest quarter, and the west half of the southwest quarter, and the east half of the southeast quarter of section No. twenty-two (22), and the west half of the southeast quarter of section No. twenty-two, and the southwest quarter of the northeast quarter, and the south half of the northwest quarter of section No. twenty-six (26); all of the said lands being in township No. twenty-seven (27) north, of range No. thirteen (13) west of second principal meridian, to have and to hold unto him, the said L. M. Peck, his heirs and assigns, forever, subject however to all the rights of redemption provided by law.

In witness whereof, I, Harrison O. Henry, sheriff as aforesaid, by vir-

tue of the authority aforesaid, have hereunto subscribed my name and affixed my seal this first day of July, A. D. 1864.

H. O. HENRY, [SEAL.]
Sheriff of Iroquois County, Illinois.

STATE OF ILLINOIS, *Iroquois County, ss:*

I, Thomas Vennum, clerk of the circuit court in and for the said county, in said State, do hereby certify that Harrison O. Henry, sheriff of Iroquois County, Illinois, whose signature appears to the within deed, and who is personally known to me to be the real person who signed
24 and executed the same, this day, in his proper person, came before me and acknowledged that he executed the same as such sheriff aforesaid, for the use and purposes in said deed expressed.

Witness Thomas Vennum, clerk, and the seal of said court affixed, at Middleport, this first day of July, A. D. 1864.

[SEAL.] THOMAS VENNUM, *Clerk.*

STATE OF ILLINOIS, *Iroquois County, ss:* No. 8,514.

I do hereby certify that this deed was filed for record July 1st, A. D. 1864, at nine o'clock a. m., and duly recorded in Book No. 30, page 371.

THOMAS VENNUM,
Clerk & Recorder.

Deed from Peck et ux. to Bourland.

A deed from L. M. Peck & wife to B. L. T. Bourland, dated July 1, 1864; which said deed is in the words and figures following to wit:

This indenture, made this first day of July, in the year of our Lord one thousand eight hundred and sixty-four, between L. M. Peck and Sara C. Peck, his wife, of the county of Iroquois, and State of Illinois, party of the first part, and B. L. T. Bourland, of the city and county of Peoria, and State of Illinois, the party of the second part, witness-
25 eth: That the said party of the first part, for and in consideration of one hundred dollars in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom, have remised, released, sold, conveyed, and quit-claimed, and by these presents, do remise, release, sell, convey, and quit-claim, unto the said party of the second part, his heirs, and assigns forever, all the right, title, interest, claim, and demand, which the said party of the first part have in and to the following-described lots, pieces, parcels of land, to wit: The east half of the southwest quarter, and the west half of the southwest quarter, and the east half of the southeast quarter, and the west half of the southeast quarter of section No. twenty-two (22), and the southwest quarter of the northeast quarter, and the south half of the northwest quarter of section No. twenty-six (26); all of the foregoing lands lying and being in township No. twenty-seven (27) north, of range No. thirteen (13) west of the second principal meridian, in Iroquois County, Illinois; to have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all the estate, right, title, interest, and claim whatever of the said party of the first part, either in law or equity, to the
26 only proper use, benefit, and behoof of the said party of the second part, his heirs, and assigns forever.

And the said L. M. Peck, and Sarah C. Peck, his wife, the party of the first part, hereby expressly waive, release, and relinquish unto the said party of the second part, his heirs, executors, administrators, and assigns, all right, title, claim, interest, and benefit whatever, in and to the above described premises, and each and every part thereof, which is given by or results from all laws of this State pertaining to the exemption of homesteads.

And the said party of the first part, for themselves and their heirs, executors, and administrators, do covenant, promise, and agree to and with the said party of the second part, his heirs, executors, administrators, and assigns, that they hath not made, done, committed, executed, or suffered any act or acts, thing or things, whatsoever, whereby,
27 or by means whereof, the above mentioned and described premises, or any part or parcel thereof, now are, or at any time hereafter shall or may be, impeached, charged, or incumbered in any manner or way whatsoever.

In witness whereof, the said party of the first part hereunto set their hands and seals the day and year first above-written.

L. M. PECK: [SEAL.]
SARAH C. PECK. [SEAL.]

Signed, sealed, and delivered in presence of—

STATE OF ILLINOIS, *Iroquois County, ss:*

I, Asa B. Roff, a notary public in and for said county, in the State aforesaid, do hereby certify that L. M. Peck, and Sarah C. Peck, his wife, who are personally known to me as the same persons whose names are subscribed to the foregoing instrument of writing, appeared before me this day in person, and acknowledged that they signed, sealed,
28 and delivered the said instrument of writing, as their free and voluntary act for the uses and purposes therein set forth.

And the said Sara C. Peck, wife of the said L. M. Peck, having been by me examined separate and apart and out of the hearing of her husband, and the contents and meaning of the said instrument of writing having been by me fully made known and explained to her; and she also by me being fully informed of her rights under the homestead laws of this State, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned, and also all her rights and advantages under and by virtue of all laws of this State relating to the exemption of homesteads, without the compulsion of her said husband; and that [and that] she does not wish to retract the same.

Given under my hand and official seal this first day of July,
29 A. D. 1864.

[SEAL.] ASA B. ROFF, *N. P.*

STATE OF ILLINOIS, *Iroquois County, ss:* No. 8,517.

The within deed was filed for record in the recorder's office of Iroquois County, on the second day of July, A. D. 1864, at five o'clock p. m., and duly recorded in Book No. 30 of deeds, on page 374, &c.

THOMAS VENNUM,
Recorder of Iroquois County.

Deed from B. L. T. Bourland et al. to Isaac Underhill.

A deed from B. L. T. Bourland & wife to Isaac Underhill, dated April 29th, 1865, which is in the words and figures following, to wit:

This indenture, made the twenty-ninth day of April, in the year of our Lord one thousand eight hundred and sixty-five, between Ben-
30 jamin L. T. Bourland, of the county of Peoria, and State of Illinois, and Julia P., his wife, parties of the first part, and Isaac Underhill, of said county, of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of nine hundred dollars ($900), lawful money of the United States of America, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have remised, released, and quit-claimed, and by these presents do remise, release, and quit-claim, unto the said party of the second part, and to his heirs and assigns, forever, all those certain tracts or pieces of land situate, lying, and being in the county of Iroquois, and State of Illinois, known and distinguished as follows, to wit: The south half of section twenty-two (22), containing three hundred and
31 twenty acres, more or less; the southwest quarter of the northeast quarter of section twenty-six (26), containing forty acres, more or less; and the south half of the northwest quarter of said section twenty-six (26), containing eighty acres, more or less; all in township twenty-seven north, of range thirteen west of the principal meridian; together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof. And all the estate, right, title, interest, dower, right of dower, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in, or to the above-described premises, and every part and parcel thereof, with the appurtenances. To have and to hold all and singular the above
32 mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns, forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

B. L. T. BOURLAND. [SEAL.]
JULIA P. BOURLAND. [SEAL.]

Sealed and delivered in the presence of—

[One dollar U. S. rev. stamps, cancelled.]

STATE OF ILLINOIS, *City & County of Peoria, ss:*

I, Eliot Callender, a notary public in and for said city, do hereby certify that on this day personally appeared before me, Benjamin L. T. Bourland and Julia P. Bourland, his wife, who are personally known to me to be the same persons described in, and who executed, the foregoing deed of conveyance, and acknowledged that they had executed the same, as their free act and deed, for the uses and purposes therein expressed.

33 And the said Julia, wife of the said Benjamin L. T. Bourland, on an examination by me, separate and apart from her said husband, after the contents of said deed had been fully made known and explained to her, declared that she had executed the same, and relinquished her dower to the lands and tenements therein mentioned, freely and voluntarily, without fear or compulsion of her said husband.

Witness my hand and seal notarial this 29th day of April, eighteen hundred and sixty-five.

[SEAL.] ELIOT CALLENDER, *N. P.*

STATE OF ILLINOIS, *Iroquois County, ss :* 10,235.

Filed for record May 23rd, A. D. 1865, and duly recorded in Book No. 34, at page 313.

THOMAS VENNUM, *Clerk.*

34 *Tax receipts.*

And also the following tax receipts from the treasurer & collectors of Iroquois County, viz:

1. Dated May 2d, 1863, for the year 1862, to L. M. Peck.
2. " April 11, 1864, " " 1863, " L. M. Peck.
3. " May 23, 1865, " " 1864, to Isaac Underhill.
4. " May 4, 1866, " " 1865, " " "
5. " May 2, 1867, " " 1866, " " "

Which said tax receipts are in the words and figures following, to wit:

TREASURER'S OFFICE,
Middleport, Ill., May 2nd, 1863.

STATE OF ILLINOIS, *Iroquois county :*

Received of L. M. Peck thirty-nine $\frac{20}{100}$ dollars, in full for his State, county, town, school, road, and back taxes, on the following property in said county, for the year 1862, to wit:

Description.	Sec.	T'wn.	R'ge.	No. of ac's.	Valuation.	St'e & co. t'x.	T'wn t'x.	Di. sc. t'x.	Road t'x.	Br'ge t'x.	Back t'x.	Total t'x.
				Ac's. 100t.		$ cts.	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.
E. ½ S. W. ¼	22	27	13	80	298	3 13	30	53	60	.....	.....	4 56
W. " "	"	"	"	80	298	3 13	30	53	60	.....	.....	4 56
E. ½ S. E. ¼	"	"	"	80	224	2 35	22	40	60	.....	.....	3 57
W. ½ "	"	"	"	80	224	2 35	22	40	60	.....	.....	3 57
S W. ¼ N. E. ¼	26	"	"	40	150	1 57	15	27	30	.....	.....	2 29
S. ½ N. W. ¼	"	"	"	80	298	3 13	30	53	.....	.....	.....	3 96
W. ¼ lot 2 N. E. ¼	3	26	13	41	21 116	2 21	7	1 50	41	.....	.....	3 19
E. ¼ " 1 N. W. ¼	"	"	"	40	112	1 17	6	1 45	.....	.....	.....	2 68
" 2 "	"	"	"	80	65 226	2 37	13	2 93	.....	.....	.....	5 43
E. ½ S. W. ¼	"	"	"	80	226	2 35	13	2 91	.....	.....	.....	5 39
												39 20

35 GEO. KING, *Treasurer,*
By C. R. BROWN.

36

TREASURER'S OFFICE,
Middleport, April 11th, 1864.

STATE OF ILLINOIS, *Iroquois County:*

Received of L. M. Peck twenty-five & $\frac{94}{100}$ dollars, in full for his State, county, town, school, road, and back taxes on the following property in said county, for the year 1863, to wit:

Description.	Sec.	T'wn.	R'ge.	No. of ac's.	Valuation.	State tax.	County tax.	T'wn t'x.	Di. sc. t'x.	Road t'x.	Br'ge t'x.	Back t'x.	Total t'x
				Ac's. 100t.		$ cts.	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.
E. ½ S. W. ¼	22	27	13	80	301	2 32	1 50	29	36	64	.....	.....	5 03
W. ½ S. W. ¼	"	"	"	80	301	2 32	1 50	29	36	64	.....	.....	5 03
E. ½ S. E. ¼	"	"	"	80	226	1 74	1 13	16	27	48	.....	.....	3 78
W. ½ S. E. ¼	"	"	"	80	226	1 74	1 13	16	27	48	.....	.....	3 78
S. W. ¼ N. E. ¼	26	"	"	40	151	1 16	75	10	18	32	.....	.....	2 51
S. ½ N. W. ¼	"			80	301	2 32	1 56	21	36	64	.....	.....	5 03
													25 16
Costs of A & V	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	78
													25 94

GEORGE KING, *Treasurer.*

37

TREASURER'S OFFICE,
Middleport, May 23rd, 1865.

STATE OF ILLINOIS, *Iroquois County:*

Received of Isaac Underhill, by Thos. Vennum, thirty-one & $\frac{85}{100}$ dollars, in full for his State, county, town, school, road, and back taxes on the following property in said county, for the year 1864, to wit:

Description.	Sec.	T'wn.	R'ge.	No. of ac's.	Valuation.	State tax.	County tax.	T'wn t'x.	Di. sc. t'x	Road t'x.	Dog t'x.	Back t'x.	Total tax.
				Ac's. 100t.		$ cts.	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.
E. ½ S. W. ¼	22	27	13	80	320	2 40	2 40	22	80	32	.....	.....	6 14
W. ½ S. W. ¼	"	"	"	80	320	2 40	2 40	22	80	32	.....	.....	6 14
E. ½ S. E. ¼	"	"	"	80	240	1 80	1 80	17	60	24	.....	.....	4 61
W. ½ S. E. ¼	"	"	"	80	240	1 80	1 80	17	60	24	.....	.....	4 61
S. W. ¼ N. E. ¼	26	"	"	40	166	1 20	1 20	11	40	16	.....	.....	3 07
S. ½ N. W. ¼	"	"	"	80	320	2 40	2 40	22	80	32	.....	.....	6 14
Cost	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1 14
													31 85

GEORGE KING, *Treasurer.*

38 WATSEKA, ILL., *May 4th*, 1866.

STATE OF ILLINOIS, *Iroquois County:*

Received of Isaac Underhill, of Peoria, Ill., thirty-seven $\frac{48}{100}$ dollars, in full for his State, county, town, school, road, and back taxes on the following property in said county, for the year 1865, to wit:

Description.	Sec.	T'wn.	R'ge.	No. of ac's.	Valuation.	State tax.	County tax.	T'wn tax.	Di. sc. t'x.	Road t'x.	Total t'x.
				Ac's. 100t.		$ cts.	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.
E. ½ S. W. ¼	22	27	13	80 —	317	2 28	3 49	13	79	32	7 01
W. ½ S. W. ¼	"	"	"	80 —	317	2 28	3 49	13	79	32	7 01
E. ½ S. E. ¼	"	"	"	80 —	238	1 71	2 62	9	59	24	5 25
W. ½ S. E. ¼	"	"	"	80 —	238	1 71	2 62	9	59	24	5 25
S. W. ¼ N. E. ¼	26	"	"	40 —	238	1 71	2 62	9	59	16	5 17
S. ½ N. W. ¼	"	"	"	80 —	317	2 28	3 49	13	79	32	7 01
Costs											78
											37 48

P. T. RHODES, *Collector.*

M. STANLY.

39 WATSEKA, ILL., *May 2nd*, 1867.

STATE OF ILLINOIS, *Iroquois County:*

Received of Isaac Underhill, per L. Armstrong, forty-one $\frac{68}{100}$ dollars, in full for his State, county, town, school, road, and other taxes on the following property in said county, for year 1866, to wit:

Description.	Sec.	T'wn.	R'ge.	Valuation.	State tax.	T'wn t'x.	Di. sc. t'x.	Road t'x.	Co. & b'ty. t'x.	t'x.	Total t'x.
					$ cts.	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.	$ cts.
E. ½ S. W.	22	27	13	466	3 26	19	1 86	64	7 92	.....	13 87
W. ½ S. W.	"	"	"	388	2 72	16	1 55	64	6 59	.....	11 66
S. ½ N. W.	26	"	"	544	3 81	22	2 18		9 25	.....	15 46
Advertising											69
											$41 68

P. T. RHODES, *Collector.*

40 Stating that the object of offering the same in evidence was to recover the amount of taxes & costs paid upon the land in suit in said case, under the terms of the statute, enacted by the legislature of the State of Illinois, of February 21, 1861, in case said deed from said sheriff was questioned title by said plaintiff, and to defeat the plaintiff by using said deed as title if he refuse to pay the same according to said statute. But the court was of opinion that the said defendant had not brought himself within the said statute, and for the reason, among others, that he must first show there was a judgment as the foundation of said tax sale and deed, and so ruled; to which ruling the said defendant then and there excepted.

This was all the evidence in the case offered or received from either party.

THOMAS DRUMMOND. [SEAL.]

(Indorsed:) Filed May 30th, 1868.

WM. H. BRADLEY, *Clk.*

41 On this day, to wit, the third day of July, in the adjourned May term, A. D. 1868, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

Judgment.

JOHN M. HERNDON *vs.* ISAAC UNDERHILL. } Ejectment.

The motion of the defendant, heretofore entered, for a new trial of this cause, not being urged, the same is overruled by the court. It is thereupon considered and adjudged by the court that the said plaintiff do have and recover of the said defendant possession of the said real estate and premises aforesaid described according to the force, form, and effect of his said recovery, and that he have a writ of possession therefor; and that he also have and recover of the defendant the said sum of one cent, his damages so as aforesaid assessed, together with his costs and charges by him about his suit in this behalf expended, amounting to the sum of thirty-three dollars and fifty-five cents, and that he have execution therefor.

42 On this day, to wit, the 8th day of July, A. D. 1868, came said defendant and filed in said clerk's office his appeal bond in said cause; which said appeal bond is in the words and figures following, to wit:

Appeal bond.

Supreme Court of the United States.

JOHN M. HERNDON *vs.* ISAAC UNDERHILL. } Ejectment.

Know all men by these presents, that we, Isaac Underhill and Charles Holland, are held & firmly bound unto the above-named John M. Herndon in the penal sum of one thousand dollars, to be paid to the said John M. Herndon, his executors, & administrators; to the payment of which, well & truly to be made, we bind ourselves, our heirs, executors, & administrators, firmly by these presents.

Sealed with our seals & dated the 3rd day of July, A. D. 1868.

43 Whereas the above-named Isaac Underhill has prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above-entitled suit by the circuit court of the United States for the northern district of Illinois:

Now, therefore, the condition of this obligation is such, that if the above-named Isaac Underhill shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, and specially shall pay the rents & profits of the premises in controversy, in case he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be & remain in full force & effect.

ISAAC UNDERHILL. [SEAL.]
CHAS. HOLLAND. [SEAL.]

STATE OF ILLINOIS, *County of Cook:*

44 Charles Holland, being sworn, says that he is worth five thousand dollars over & above all just debts & liabilities.

CHAS. HOLLAND.

Sworn to and subscribed this 3rd July, 1868, before me.

E. A. DRUMMOND,
U. S. Com'r.

Approved:

THOMAS DRUMMOND.

(Endorsed:) Filed July 8th, 1868.

WM. H. BRADLEY, *Clk.*

45 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said district, do hereby certify the above and foregoing to be a true, correct, and complete transcript of the record of all the proceedings had in said court in said entitled cause, wherein John M. Herndon is plaintiff, and said Isaac Underhill is defendant, as the same appears of record remaining in my custody.

In testimony whereof, I have hereunto set my hand and affixed the seal of said circuit court at my office in the city of Chicago, in said district, this fifth day of December, A. D. eighteen hundred and sixty-eight, and of the independence of the United States the ninety-third year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

[Five-cent int. rev. certificate, canceled: W. H. B., Dec'b. 5, 1868.]

46 CIRCUIT COURT OF THE UNITED STATES,
Northern District of Illinois, ss:

The United States of America to the judges of the circuit court of the United States for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court before you, between John M. Herndon, plaintiff, and Isaac Underhill, defendant, a manifest error hath happened to the great damage of the said Isaac Underhill, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next in the said Supreme Court to be then and there held, that the record and proceedings being inspected, the said Supreme
47 Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this sixth day of July, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States the ninety-third year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

(Indorsed:) Circuit court United States, northern dist. of Ill's. John M. Herndon vs. Isaac Underhill. Writ of error.

48 UNITED STATES OF AMERICA, *ss*:

To John M. Herndon, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the 8th circuit and northern district of Illinois, wherein Isaac Underhill is plaintiffs, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

July 14, 1868.

THOMAS DRUMMOND.

(In pencil:) Rec'v'd copy of above, July 21, 1868.

H. M. WEAD,
Att'y for Herndon.

(Indorsed:) U. S. Supreme Court. Isaa Underhill vs. John M. Herndon. In error. Citation to John M. Herndon.